

## INTRODUCTION

This handbook was created to help tenants better understand their rights and responsibilities. It also outlines how to remedy the most common tenant-landlord conflicts such as security deposits, leases, and eviction. **This guide is meant to help tenants deal with problems that arise, but should never be used as a substitute for legal advice.**

## DOCUMENTATION

It is best to maintain a file of all notes, papers, and receipts pertaining to tenancy. The guide will continually refer to situations which will require documentation. It is also important that the tenant document any actions taken surrounding a dispute or agreement with their landlord.

## NATIONAL FAIR HOUSING POLICY

The Fair Housing Act was signed into law on April 11, 1968. This Act prohibits discrimination on the basis of race, color, religion, and national origin. In 1974, the Act was amended to prohibit sex discrimination. In 1988, Congress expanded the scope of the Act to include persons with disabilities and families with children. As of 1995, there are seven groups protected by the Fair Housing Act. The Act makes it illegal for a person, on the basis of:

- Race
- Sex
- Color
- Religion
- National Origin
- Physical or Mental Disability
- Familial Status

To do any of the following:

- Make, print, publish or post statements or advertisements that a house or an apartment is preferred for, or limited to, persons of a certain race, color, sex, disability, etc., unless specifically designated by HUD as certain housing. Call Gunnison County Housing Authority for more information at 970-641-7900.
- Represent a house or apartment is not available even though it is available.
- Discriminate in the terms and conditions for renting a home or apartment.
- Persuade or attempt to persuade people, for profit, to rent their homes or apartments by representing that minority groups are moving into the area (this is called BLOCKBUSTING).
- Refuse to sell, rent or negotiate for the sale or rental of a house or an apartment or otherwise to make housing unavailable.
- Deny or make different terms for home loans by commercial lenders (i.e. banks, savings and loan associations, insurance companies).

- Deny anyone the use of real estate services, such as a broker or multiple listing service.
- Coerce, intimidate, threaten, or interfere with anyone who exercises or encourages others to exercise rights granted by the Fair Housing Act.

If you feel you have been discriminated against or have questions regarding discrimination, please call:

Civil Rights Division in Grand Junction  
Gunnison County Housing Authority

970-248-7329  
970-641-7900

## **KNOW YOUR RENTAL RIGHTS AND RESPONSIBILITIES!**

### **LANDLORD DUTIES:**

1. Put and keep the premises in a fit and habitable condition.
2. Keep the common areas safe and sanitary.
3. Comply with building, housing, health, and safety codes.
4. Keep in good working order all electrical, plumbing, heating, and ventilation systems and fixtures.
5. Maintain all appliances and equipment supplied or required to be supplied by the landlord (according to the lease).
6. Provide running water and reasonable amounts of hot water and heat, unless the hot water and heat are supplied by an installation that is under the exclusive control of the tenant and supplied by a direct public utility hook-up.
7. It is suggested to give at least 24 hours notice, unless it is an emergency, before entering a tenant's unit, and enter only at reasonable times and in a reasonable manner.
8. Evict the tenant when informed by a law enforcement officer of drug activity by the tenant, a member of the tenant's household, or a guest of the tenant occurring in or otherwise connected with the tenant's premises.

### **TENANT DUTIES:**

1. Keep the premises clean, safe, and sanitary.
2. Dispose of rubbish in the proper manner.
3. Keep the plumbing fixtures as clean as their condition permits.
4. Use electrical and plumbing fixtures properly.
5. Comply with housing, health, and safety codes that apply to tenants.
6. Refrain from damaging the premises and keep guests from causing damage.
7. Maintain appliances supplied by the landlord in good working order.
8. Use conduct in such a manner that does not disturb any neighbors and require guests to do the same.
9. Permit landlord to enter the dwelling unit if the request is reasonable and proper notice is given.
10. Comply with state or municipal drug laws in connection with the premises and require household members and guests to do likewise.
11. During winter months keep home at 45 degrees or warmer to preserve plumbing.

## **LEAD BASED PAINT STANDARDS**

Lead-based paint can be found on the painted surfaces-inside and outside-of many residences built before the 1978 ban. The U.S. Department of Housing and Urban Development (HUD) estimates that 83% of private housing and 86% of public housing built prior to 1980 contain lead-based paint. In addition, the older the home, the more likely it is to contain lead-based paint. To help protect people against lead hazards in homes, EPA and HUD developed the Real Estate Disclosure Rule. The owner of any home built before 1978 must follow guidelines set out by the Rule and inform possible buyers and renters about known lead-based paint hazards in the home.

If a tenant plans to rent housing built before 1978, the landlord must:

- Tell you about any known lead-based paint or lead-based paint hazards in the home.
- Give you any records or reports about lead-based paint or lead-based paint hazards in the home.
- Give you a copy of EPA pamphlet titled Protect Your Family From Lead in Your Home. The pamphlet briefly describes lead hazards and lead poisoning.
- Include certain warning language in the rental contract and a signed statement verifying that all requirements have been met.
- Keep the signed statement for three (3) years.

The landlord is not required to:

- Test the home for lead.
- Remove any lead-based paint or lead-based paint hazards discovered during any testing that you have conducted.
- Give you 10 days to test for lead.

For more information on lead-based paint hazards contact the Gunnison County Housing Authority at 970-641-7900.

## **INSPECTING THE RENTAL UNIT**

The tenant should always be sure to inspect the rental unit carefully before agreeing to sign a lease. Using a checklist is the most appropriate tool to use as it can be signed by the landlord and tenant. Some things to look for include:

- Look at the actual unit you may rent and not a similar unit.
- The rental unit should be in livable condition before entering into a rental agreement. If the plumbing, stove, refrigerator, or heating does not work, it may be difficult to get a landlord to make necessary repairs. The section on the Uniform Housing Code (page 7)

gives a summary of the minimum housing standards in Gunnison. Use it as a guide when inspecting the rental unit. It is always a good idea to try and talk with someone who rents from the prospective landlord. If serious about renting a specific unit, try and get the landlord to agree to make any repairs needed, as a condition of the lease. When signing the lease, have this list and agreement attached to the lease. Carefully consider the terms of your lease, including the dates of rental. It is unwise to sign a lease for a longer period of time than your expected occupancy. See the section on breaking a lease.

**\*\*See suggested checklist at back of packet.**

## **MOVING IN**

Use these steps to eliminate legal disputes at the termination of a lease:

- Look at the SPECIFIC potential unit to be rented, NOT a similar one, two doors down.
- Before the lease is signed, the tenant should thoroughly inspect, with the help of the landlord, any existing damages or defects, necessary cleaning, condition of appliances, etc. It should be in livable condition. It may be hard to get the landlord to make crucial repairs, after the lease is signed.
- Photographs and witnesses are invaluable. By having the indisputable evidence of the conditions existing prior to the lease term, retrieval of a deposit is less challenging.
- The tenant should not be shy about talking with other tenants in the building or surrounding buildings to check the reputation of the landlord. Note his/her reliability, reputation, punctuality etc. (in regards to repair in particular)
- Lastly, when signing the lease, the tenant should attach a copy of the checklist. Also the tenant should keep his/her own copy in a file with any photographs and/or notes of verbal agreements.

### **What if the landlord misrepresents the condition of the unit?**

Once again, it is the tenant's responsibility to inspect the unit to avoid unpleasant arguments in the future. For example: If the landlord says "This unit is immaculate. It has no history of termite infestation," **\*Get this in writing\***. However, if the landlord fraudulently represents the condition of the unit, the tenant's options are to vacate and end the lease, or stay in the unit and sue for damages. **\*Note the latter is tricky to prove\*. In either case, the tenant should seek legal advice.**

### **What if defects are hidden?**

It is the landlord's obligation to tell tenant(s) about hidden defects. For example: There may be reason to believe the basement will flood during the rainy season. Upon receipt of such information, the tenant may choose to vacate and end the lease or stay in the unit and sue for damages. **\*Again see above\***.

## **THE LEASE**

A lease is the legally binding contract agreed upon between a landlord and a tenant. This document grants the tenant the right to inhabit the property of the landlord for a

given time. The lease serves as a guide for landlord-tenant relations. In the lease, the tenant will find basic responsibilities such as rent, length of occupancy, and other rules governing tenancy. As a tenant, be sure to understand everything in the rental agreement before signing.

## READING YOUR LEASE

READ THROUGH YOUR LEASE THOROUGHLY BEFORE YOU SIGN IT! Remember, a lease binds both landlord and tenant to the terms stated within. Leases are often written in a vague and confusing manner, so be sure and have anything you do not understand explained to you. By taking the time to understand the lease, the tenant can ensure that it protects his/her interests as well as your landlord's. Be sure to try and delete or modify clauses which the tenant is not comfortable signing.

### **\*THINGS TO CHECK IN YOUR LEASE\***

**LENGTH OF OCCUPANCY**-The lease should indicate the beginning and the ending dates of occupancy. During this time, the tenant has the right to possess the rental property as well as the obligation to fulfill the conditions set down in the lease. Do not sign a lease for a longer period of time than the tenant plans to stay in the unit. If your lease is on a month-to-month basis, be aware of the fact that the landlord can raise the rent or evict at the end of the month with as little as 10 days notice. A long term lease can protect tenants from rent increases or sudden eviction; however, you will be responsible for paying rent through the entire lease period.

**RENT PAYMENTS**-The lease should specify the amount of rent and when it is due, including late fees or grace periods installed by the landlord.

**SECURITY DEPOSIT**-The exact amount of the security deposit should be clearly stated, as well as any conditions for its return. For details see the section on Security Deposits.

**REPAIRS**-Responsibility for repairs should be set down in the lease. Under Colorado law, unless there is an agreement to the contrary, the landlord is NOT responsible for repairs, large or small. However, Gunnison abides by the Uniform Housing Code, which requires landlords to maintain certain standards. A tenant should try and get the landlord to commit, in writing, to making and paying for all repairs. For details see the Maintenance and Repairs section.

**"AS IS" CLAUSE**-Beware of any sentence which includes this clause. Try and modify these sections to include a clause which states "except for the following repairs." Again, try and get the landlord to commit in writing to doing cleaning and making necessary repairs.

**YARD WORK**-Responsibility for yard work should also be set out in the lease. If the tenant is responsible, then the lease should state the landlord will provide the proper the equipment.

**UTILITIES**- Check the lease to see who is responsible for paying the utilities. If responsible, ask the landlord or a neighbor for a rough estimate on the monthly cost. You can also call the utility company to get an average bill from the last renter.

**LANDLORD'S ACCESS**-Some leases allow for the landlord to enter the rental unit at any time, for any reason, without consent. Protect your privacy by stipulating that the landlord may enter only for certain reasons and must give reasonable notice. See the section under Privacy for more details.

**AUTOMATIC CLEANING**-Colorado law allows the landlord to deduct from the tenant's security deposit for "cleaning contracted by tenant." This refers to an automatic cleaning charge specified in the lease. Be sure this clause does not exist.

**SUBLETTING OR ASSIGNMENT CLAUSE**-The lease may indicate whether subletting is allowed and under what conditions. Be sure to check for this clause so the lease is not broken.

**RULES OF BEHAVIOR**-Many leases frequently include rules of behavior. These rules include things like "no pets" or "quiet after 10 p.m." Make sure all the rules are clearly stated and ensure that no clauses exist that would allow the landlord to add rules after the signing of the lease.

## CHANGING A LEASE

Oftentimes there are provisions in leases that the tenant may find unnecessary or unfair. Whenever possible, have these sections edited or deleted. All clauses of a lease are subject to negotiation, but both parties must agree on any changes made. To delete a phrase, just cross it out and have both the tenant and the landlord initial and date the change. To add a phrase, the two parties must come to an agreement on wording and then initial and date the changes. Most importantly KEEP A COPY of the changed lease.

## UNLAWFUL OR UNENFORCEABLE CLAUSES

Some landlords include clauses in their leases which are unlawful or unenforceable in court. Any section of the lease that waives the tenant's legal rights may be considered void under law. Here are some examples of unlawful clauses:

- An agreement by the tenant not to hold the landlord liable for injury or damage to his or her personal property, even if caused by the landlord's negligence is probably not enforceable. If the owner is at fault, the tenant may still sue for damages, regardless of the lease.
- Any clause which eliminates the tenant's right to court notification, procedures, jury trials, or right of appeal is illegal.
- Any clause which denies the tenant the right to contest deductions from his or her security deposit is unlawful.
- Any clause stating the tenant will automatically forfeit the deposit may be unenforceable. The landlord cannot withhold money until he/she has suffered actual damages.

## **ROOMMATE AGREEMENTS**

The lease is an agreement between the tenants and the landlord. It is not an agreement between the tenants/roommates. Most people sharing a house or an apartment have an "understanding" that they will share the rent for the full term of the lease. It is always a good idea to put your "understanding" in writing. If your roommate moves out, it may be very difficult, if not impossible, to sue and collect his/her share of the rent even if you have a written agreement. This is especially true if the roommate moves out of Colorado. A tenant's best protection is to be well-acquainted with potential roommates before signing a lease with them. Be sure roommates intend to stay for the entire term of the lease. Do not rely on their assurance that they will find a replacement when they move out mid-month. Make sure and read through the lease before allowing a roommate to share the home. Many leases have clauses about unauthorized residents in them, which could lead to eviction.

## **UNIFORM HOUSING CODE**

The 1994 Uniform Housing Code has been adopted by the City of Gunnison. The purpose of this code is to provide minimum standards to safeguard life or limb, health, property, and public welfare by regulating and controlling the use, occupancy, location, and maintenance of all residential buildings and structures within this jurisdiction. Every building including apartments, hotels, rooming houses, and any other dwelling intended for human habitation, must comply with all the requirements of the Uniform Housing Code.

### **\*UNIFORM HOUSING CODE: STANDARDS & REQUIREMENTS\***

1. The City Building Official (only if asked first, or if there is some life threatening hazard) may enter and inspect the premises at reasonable times, if that Official has cause to believe the building unsafe, dangerous, or hazardous.
2. Every owner or agent (landlord) must be RESPONSIBLE FOR:
  - Maintaining the building in a sound structural condition.
  - Keeping safe and sanitary conditions through repairs & maintenance.
  - Furnishing and maintaining approved sanitary facilities.
  - Provide equipment or facilities for the prevention of insect and rodent infestation.
  - If infestation does occur, the extermination will be paid for by landlord, if it is not made the responsibility of the occupant.
3. Every occupant must be RESPONSIBLE FOR:
  - Disposing of all rubbish and garbage.
  - Keeping a clean, safe, and sanitary condition which the occupant has been assigned under the lease.
  - Furnishing and maintaining equipment or facilities necessary to keep the premises safe, clean, and sanitary, or as state in the lease.

4. A permit must be obtained by the owner or landlord if a building or structure will undergo any type of construction, conversion. Or major repairs or improvements, inspection will be made in accordance with the code.
5. Every yard will not be less than 3 feet in width for a 1-story or 2-story building, if a yard completely surround the building; it can be 2 feet in width.
6. The ceiling height must not be less than 7 feet 6 inches except kitchens, halls and bathrooms where the height must not be less than 7 feet.
7. At least one room in the dwelling must not be less than 120 square feet of floor area. Other habitable rooms, except kitchens, shall have an area of not less than 70 square feet.
8. No habitable room other than a kitchen can be less than 7 feet in width in any dimension.
9. All habitable rooms, as well as guest rooms, shall contain some type of natural light and ventilation through windows or mechanical sources.
10. All bathrooms, laundry rooms, and similar rooms shall be provided with some kind of ventilation, either mechanical or natural.
11. All public hallways, stairs, and other exit ways must be adequately lighted.
12. A private bathroom shall be provided, separate from the kitchen and food preparation facilities.
13. Each dwelling shall be provided with a kitchen, and each kitchen must contain a sink.
14. Every building must be weather protected to provide shelter against all elements.
15. All roofs, walls, foundations and other structural components must be capable of resisting any forces and loads to which they may be subjected. All wood must be protected against termite damage and decay.
16. Every dwelling must be provided with heating facilities capable of maintaining a room temperature of 70 degrees Fahrenheit.
17. All electrical equipment must be installed and maintained in a safe manner in accordance with all applicable laws.
18. Every dwelling unit must have a direct access to the outside or to a public corridor.
19. If the tenant's dwelling has been inspected and failed, a "notice to vacate" sign will be posted; It will read: DO NOT ENTER UNSAFE TO OCCUPY

\*If this happens, contact the landlord and City Building Official and Fire Department immediately, Legal counseling might also be helpful!

**NOTE:** This is a brief interpretation of the Uniform Housing Code and only covers sections that can be directly related to tenants and what they should be aware of before and during the renting process. If a tenant feels that his/her living quarters are in violation of the Uniform Housing Code, contact the City Building Official immediately for a full copy of the code and/or inspection service, which may or may not be free, depending on the circumstances.

## SECURITY DEPOSITS

A security deposit (also known as a damage deposit, cleaning deposit, last month's rent, etc...) is any advance payment by the tenant to ensure he or she will carry out all parameters of the lease. All security deposits are regulated by Colorado law, section 38-



12-101, et seq., C.R.S. Deductions from the deposit can be made by the landlord for the following reasons:

- Any unpaid rent or utility bill unpaid by the tenant.
- Payment for damages to the rental unit "beyond normal wear and tear" which is defined under Colorado state law to mean "that deterioration which occurs based upon the use for which the rental unit is intended, without negligence, carelessness, accident, or abuse of the premises or equipment or chattels by the tenant or members of his/her household or invited guests."
- Any other breach of the lease causing financial damage to the landlord.

### **RETURN OF THE SECURITY DEPOSIT**

If the tenant has fulfilled all the terms of the lease by paying rent in full and on time, leaving no financial obligation for the landlord, giving proper notice of departure, if required, and leaving the rental unit in the same condition as it was in upon moving in, minus "normal wear and tear," the tenant is entitled to a full return of his/her security deposit. The deposit should be collected in person or the tenant should leave a forwarding address with the landlord. Colorado law requires that the landlord return the security deposit or an itemized statement of the deductions and the balance, if any, to the tenant within one month of the termination of the lease or the surrender of the premises, whichever occurs last. The landlord may increase the time period to sixty days, but only if it is specified in the lease. The deposit or itemized statement must be mailed to the tenant's last known address. If the landlord fails to provide a written statement with the balance of the deposit in full within the allotted time frame, the landlord forfeits his/her right to withhold any portion of the security deposit. However, the landlord would still have the right to receive compensatory damages by bringing a lawsuit against the tenant for unpaid rent, damages to the premises, or any other financial obligation owed by the tenant.

### **HOW TO ENSURE THE RETURN OF THE SECURITY DEPOSIT**

The following steps should ensure the safe return of the tenant's security deposit. If these steps are followed and the tenant does not get a refund, the tenant should seek legal advice.

- Proper notice according to the lease agreement is given by tenant.
- When paying the security deposit, get a receipt or keep the canceled check on file. (It is best not to pay the security deposit in cash.)
- Inspect the premises thoroughly before moving in or out. Fill out a checklist. Carefully mark all damages, large and small, then comment on the cleanliness of the unit. If there is furniture, make an inventory list of all furniture, so there is no charge for non-existing furniture. Get the landlord or manager to go through the unit also. If they refuse, get a neighbor or friend to serve as a witness and sign the checklist. This checklist can serve as evidence of the unit's condition if the tenant has to negotiate with the landlord over the deposit. The checklist can also serve as

a way to inform the landlord of any needed repairs. Make sure the landlord gets a copy of the checklist and get him/her to commit in writing to making any necessary repairs.

- It is encouraged to take photographs of the unit. Do this to capture any damages and the general condition of the premises. These pictures should be kept on file in case they are needed.
- Pay rent on time and keep records.
- Take care of the premises. If repairs are needed, contact the landlord. If he/she does not respond, notify him/her in writing and keep a copy.
- When moving out, do a thorough cleaning job. If the unit is extremely dirty, the landlord can deduct costs from the security deposit. If the unit is not cleaned (above "normal wear and tear"), then the landlord is allowed to hire professional cleaners, at professional rates, to finish the job. It will be cheaper for the tenant to clean his/herself. If the tenant does a good job outlining the condition upon moving in, he/she should know how it needs to be left. Landlords should expect to replace and clean carpets and repaint periodically. Landlords should also expect carpets and drapes to fade and furniture to get worn due to "normal wear and tear." However, if the carpet is never vacuumed, or friends or pets have accidents, the landlord may charge for cleaning costs. Taking the time to repair furniture and holes in the walls would only take a little effort, combined with glue, nails, wire, and paint, and could save a lot of money.
- Upon moving out, the tenant should tour the premises with the landlord, listing any damages or necessary cleaning. Be sure to complete the check-out portion on the checklist. If possible, do not allow the landlord to complete this on his/her own because it becomes harder to contest the damages he/she lists before he/she deducts them from the deposit. If the tenant and the landlord agree on the damages, if any, for which he/she is responsible, each person should sign and date the checklist. If there is a disagreement, list the discrepancies and try to get the landlord to sign. If the landlord refuses to do the house tour, get a friend or a neighbor to witness the inspection, then have him/her to sign the checklist. In either case, give the landlord a copy and keep a copy for personal files. This list will be valuable evidence if a court hearing becomes necessary.
- Upon departure; take another set of pictures and keep them on file.
- Make sure to leave the landlord a forwarding address so he/she knows where to send the deposit.

### **WHAT SHOULD THE TENANT DO IF THE DEPOSIT IS NOT RETURNED OR IF THERE IS A DISAGREEMENT WITH THE AMOUNT WITHHELD?**

If the landlord does not return the deposit or an itemized list of deductions within the allocated time period (30 days unless otherwise specified in the lease), or if the tenant disagrees with the amount returned, the tenant should attempt to negotiate with the landlord to correct the situation. If this fails, the tenant should take the following steps:

1. The tenant must send the landlord a letter. This letter is called a “seven day demand letter,” and should state that the tenant will sue the landlord for three times the amount of deposit wrongfully and willfully withheld if the deposit is not returned within seven days of receiving the letter. The letter should include the address of the rental unit, dates occupied, and the amount of the deposit. If the letter is sent by certified mail, it will be easy to find out what exact day the letter was received. The tenant should also send a second letter via regular mail. The tenant should also keep a copy of this letter for documentation.
2. If the landlord complies by sending the full deposit or the disputed portion within seven days, the matter will end. However, the landlord may still sue the tenant for damages to the premises or money owed to the landlord from the tenant.
3. If the landlord does not respond within seven days the tenant may sue for the return of the deposit. If the landlord has wrongfully and willfully withheld any part of the deposit, the tenant can recover three times the amount withheld plus reasonable attorney’s fees and court costs. In court the landlord is responsible for proving he/she was right to withhold the deposit. The landlord can also counterclaim against the tenant for damages despite forfeiting his/her right to withhold the deposit. The landlord is not limited to the amount of deposit for damage charges. Many leases also provide the landlord with the ability to recover his/her attorney’s fees and court costs if he/she wins.

## **DIVISION OF SECURITY DEPOSIT**

All tenants who sign the lease are jointly liable for the performance of all conditions in the lease. The landlord, unless otherwise stated, may return the deposit to any one of the tenants. It is common practice for the landlord to divide up the deposit equally among the tenants. So it is up to the tenants to decide who is responsible for which damages. It is helpful for the tenants to agree on who gets what, write up an agreement, and sign it. They can then present this to the landlord and ask him/her to send the checks to each tenant accordingly.

## **REPAIRS AND MAINTENANCE**

**RESPONSIBILITY FOR REPAIRS**-Gunnison has a set code for housing standards locally. The Uniform Housing Code sets the minimum standards for housing conditions. (Refer to the section of the guide which outlines the Housing Code.) The tenant should also read the lease carefully in order to determine who is responsible for repairs. If the lease states the landlord is specifically responsible, then he or she must make any necessary repairs. In most cases, the landlord is probably not responsible for repairs, but should be notified anyway.

**MAKING REPAIRS YOURSELF**- Occasionally a landlord will agree to let the tenant make repairs. It is important to read the repair section of your lease before doing any repair. You must understand that if you are making repairs yourself **YOU ARE RESPONSIBLE FOR FAULTY REPAIRS**, even after moving out, do not attempt repairs that the tenant is not qualified to make. If you do decide to make your own repairs, it is necessary to save

receipts so that the proper re-payment may be made. In some instances, the landlord and tenant will agree on a fair price and have it deducted from the rental payment. Many landlords are willing to respond to their tenant's request. If the requests are not honored within a reasonable amount of time, a formal letter should be written stating the request for a meeting to discuss the problem. At this meeting come equipped with a good attitude, the needs, and a copy of the Gunnison Housing Code. This will work in the tenant's favor if a difference in opinion leads to a filed suit against the landlord.

## **PRIVACY**

Colorado law implies a "covenant of quiet" which, in principle, protects tenants' privacy. However, enforcement is difficult. The most important step a tenant can take to ensure his/her privacy is by carefully reading the lease. Make sure there is a section outlining when and how your landlord can enter the premises. If this information is not specified, make sure it gets added before you sign. Tenants should, at the very least, require the landlord to give them 24 hours notice before entering the premises. The sample lease in this guide defines, as the terms of entry; "Residents shall permit owner/agent to enter the premises at reasonable times and upon reasonable notice for the purpose of making necessary or convenient repairs or reasonable inspections, or to show the premises to prospective residents, purchasers, or leaders. Entry may be made without prior notice only if the owner/agent reasonably believes that an emergency exists, such as a fire or broken water pipe, or that the premises have been abandoned." Here are some other tips on how to ensure privacy as a tenant.

### **WHEN CAN THE LANDLORD ENTER THE UNIT?**

The landlord may enter the unit at a reasonable time and in a reasonable manner without force or physical threats in the following situations:

- The tenant has given permission.
- There is an emergency.
- The landlord is asserting a valid, legal landlord's lien.
- The landlord may enter to make repairs.
- The landlord may enter at other times if the tenant has given permission, either verbally or in the lease.

### **WHAT CAN A TENANT DO WHEN THE LANDLORD ENTERS WITHOUT PERMISSION?**

If the landlord enters the unit without permission, the tenant may consider taking the following actions:

- Send a written complaint to the landlord. In the letter, request that the actions be stopped immediately or that permission be obtained from the tenant in the future.
- If the intrusions continue, the tenant should send another letter stating the landlord's failure to comply and the tenant's intention to take action to assert legal right to privacy.
- The tenant could change the locks and not give the landlord a key. (Make sure and read your lease before taking this step, as it could be in violation and cause eviction.)

This makes the tenant responsible in cases of emergency and the tenant must replace the original locks upon moving out. Also, the tenant should send the landlord a letter stating that the locks have been changed for privacy and that he/she should contact the tenant to gain entrance.

-The tenant can also just call the police if the above options do not look appealing. The landlord can be subject to arrest for breaking and entering.

### **WHAT CAN A TENANT DO IN THE CASE OF SEXUAL HARASSMENT?**

Colorado law does not allow landlords to base conditions or decisions on whether or not tenants accept or deny sexual advances. If this happens to a tenant, seek legal advice immediately.

### **CAN A TENANT BREAK A LEASE BECAUSE OF HARASSMENT?**

If the landlord's harassment is making the tenant's life and living conditions unbearable, the tenant may move before the expiration of the lease without liability for unpaid rent.

This will only be justified if:

-There is a document outlining the type of harassment.

-The landlord is sent a letter stating this information, and the intention to move because of the landlord's prior action.

### **ALWAYS KEEP COPIES OF IMPORTANT DOCUMENTS**

## **LANDLORD LIEN**

Due to the complexity of the legal procedures, most attorneys advise against asserting a landlord's lien. Colorado law provides that, in certain situations, the landlord may execute a lien on a tenant's personal property. This occurs when the tenant fails to pay rent. In some cases, namely when a landlord has filed a claim for unpaid rent, the landlord is allowed to enter the rental property peacefully and at a reasonable time to seize property that is covered by the lien. The landlord is only allowed to take certain items belonging to the tenant for payment of rent. Small kitchen appliances, cooking utensils, bedding, beds, necessary clothes, personal or business records, or personal effects are not allowed to be taken under Colorado law. However, a landlord can take items such as stereos, CD's, and televisions. The value of the property taken can not exceed the amount owed by the tenant.

If your property is taken, you have thirty days to pay your rent. If you fail to pay, the landlord must file a foreclosure in court. At this point the landlord must follow a very complicated legal procedure set down by Colorado law before he/she can sell the tenant's property. If the landlord sells the property without following all the proper legal procedures, the tenant is entitled to file suit to recover the value of the property or \$100.00, whichever amount is greater, plus reasonable attorney's fees. If the landlord wrongfully takes possession of the tenant's property, he or she can collect both actual and punitive damages. If a tenant finds his/her property has been taken, he/she should make a list of what has been taken as well as any written notices from the landlord. The

tenant should contact the landlord to try to negotiate the return of the missing property. Many landlords use the landlord's lien in order to get the attention of their tenants. In these cases, the landlords are more than eager to return the tenant's property just as soon as the tenant arranges to get the landlord the money due. If the tenant disagrees on the amount of money owed or the landlord refuses to return the seized property, the tenant should seek immediate legal advice.

## **TERMINATION OF A LEASE**

### **Why Does A Lease Terminate?**

There are several reasons for the termination of a lease. The most obvious is that the lease expires, or the tenant moves out under agreement with the landlord. There are some situations in which the tenant or landlord party gives notice if the lease has been broken. The procedure for notice of termination will be discussed further in this chapter.

### **Month-to-Month Termination.**

If there is no expiration stated in a lease and the tenant pays on a month-to-month basis, then the tenancy is automatically renewed, unless other arrangements have been made, and the tenant or landlord is informed. The landlord and the tenant both have the right to end the lease for any reason, or none at all. If termination is the case, either the landlord or the tenant must give notice at least ten days before rental payment for the next month is due. The lease may have a month-to-month clause after the lease expires.

### **Termination of a Lease With A specific Ending Date.**

A lease that states a specific ending date will end on that date, unless other arrangements have been made. It is not necessary to give notice if this is the case. If the tenant moves out before the end of his/her lease without permission from the landlord, the security deposit may be kept by the landlord. Further action may also be taken, such as the landlord suing the tenant for the remainder of the rent, as agreed in the lease. However, if the tenant informs the landlord and agreements are made, then the tenant is relieved of the responsibility to pay any further rent.

### **Eviction and Proper Procedure.**

If the landlord can prove that a part of the lease has been broken, the landlord may then begin the process of eviction. Once this process is in effect, the tenant is no longer responsible for future rental payments. However, if the lease clearly states that the tenant is responsible for the remainder of the rent regardless of whether the tenant is evicted, the tenant may then be forced to pay rent until the date the lease ends.

## **EVICTON**

The landlord may evict a tenant if rent hasn't been paid, the tenant has broken a condition of the lease, the tenant remains on premises without permission after the lease is up, or if there is no term of agreement of occupancy. The landlord must give proper notice and abide by the laws of Colorado under "Forcible entry and detainer" (FED).

## **UNPAID RENT**

The landlord must give the tenant a written and signed demand giving the tenant the choice of either paying the rent that is due, or to move out within 3 days, not counting the day which the notice is given. If the tenant is unavailable, the landlord may give the notice to another person living on the premises, or to a tenant's family member of fifteen years or older. If the does not comply with the notice, the landlord can file an eviction suit. If a tenant receives a three day demand and is unable to pay the full amount, the tenant should make an arrangement with the landlord for a partial payment plan. If the landlord accepts this proposal, get the agreement in writing. The landlord has the right to not accept the rent or any partial payment of rent after three days.

## **BROKEN CONDITION OF LEASE**

Before filing a suit to evict a tenant for noncompliance with lease conditions, the landlord must deliver or post a written, signed demand for delivery of possession of the premises. The notice must state the reason the landlord believes the tenant is in violation of the lease and give the tenant three days to either move out voluntarily or correct the violation. After the written notice has been posted and if the tenant has not moved out by the end of the three days (72 hours) and has not corrected the violation, the landlord may file an eviction suit in the courts. The start of the three day time limit begins running when the demand notice is delivered (date and time on notice), not when the tenant discovers it posted. Also the time continues to run through weekends and holidays.

## **REMAINING ON PREMISES BEYOND THE TERM OF THE LEASE**

The landlord must deliver the notice to the tenant 10 days before the rent is due. If the tenant isn't out by the end of the rental period, the landlord can file an eviction suit. No written notice is required if the lease term ends on a certain day, and there is no automatic extension included in the lease. If the tenant doesn't move out, the landlord may begin eviction action. Lockouts are illegal. If a tenant is locked out, he/she may break the lock to enter. Tenants cannot be prosecuted for breaking into their premises, but the tenant can be arrested for breaking and re-entering. Seek legal advice from an attorney before breaking the lock.

## **ABANDONING UNIT AND LEAVING PROPERTY BEHIND**

If it appears that the tenant has moved out with no intention of returning, the landlord may take over possession of the unit. If the tenant leaves property behind, the landlord should make an effort to contact the former tenant. If the landlord is unable to get in touch with the tenant, the landlord may then proceed to sell the property in accordance with the law. The landlord may also have the property removed from the unit. This method of removal is the least likely to result in liability to the landlord. If the property

happens to be motor vehicle, the landlord should contact any attorney or the Gunnison Police Department at 641-8000.

### **LEGAL EVICTION PROCEDURES**

The landlord may file a summons and complaint in the County court. The complaint must contain the grounds for eviction, description of property, name of tenant, request for possession of property, claim for back rent, current rent, and other damages. The summons requires the tenant to appear in court on a given date and at a certain time. After the summons is issued, the court date must be no more than 10 days and no less than 5 days. Not only does the summons state the court date, but it also serves as a warning for the tenant about the consequences of failing to answer the complaint. The landlord should bring four copies of the summons and complaint to the County court.

Service must be made at least five days before the court date stated in the summons, according to Colorado Rules of Civil Procedure. This means that the landlord should hand deliver the complaint to the tenant. If this is impossible, the landlord should then post the complaint and mail a copy to the tenant by first class mail, postage prepaid, on the same day that the complaint was filed. By doing this, the landlord will only be able to recover possession of the unit, and will not be able to get a judgment for unpaid rent and damages.

The tenant must file a written answer before the tenant's court date. There is a fee to file and answer. The answer can include any claims that the tenant has against the landlord, as well as, any denial of charges. IF THE TENANT DOESN'T FILE AN ANSWER, THE LANDLORD WILL RECEIVE A DEFAULT JUDGMENT. The judge may either rule in favor of the tenant or the landlord. If the judgment is in favor of the landlord, the tenant, by court order, may not only have to evacuate the unit, but also pay back rent as well as damages. Attorney's fees and court costs may also be awarded to the prevailing party. If the judgment is in favor of the landlord, the tenant has 48 hours to move out. If the tenant isn't out within this time period, the landlord can get a WRIT OF RESTITUTION. The sheriff will then move the tenant's possessions onto the street. Neither the landlord nor the sheriff are under any legal obligation to safeguard the tenant's possessions after they have been removed.

### **LEGAL REMEDIES**

If a problem can not be resolved by the landlord and/or the tenant, legal action in Small Claims Court is an option. Small Claims Courts are informal courts where people can sue for a small amount of money (up to \$7500.00) without a lawyer. You may find yourself going to court as a "plaintiff" when suing the landlord, or as a "defendant" when being sued by the landlord. A judge or referee presides over the court. Both parties are given an opportunity to present their case. The hearings are designed to be quick and informal, as well as, to give people an inexpensive way of settling claims. Since no



attorneys are allowed in Small Claims Court, both the tenant and the landlord must defend themselves.

**LOCAL RESOURCES:**

Gunnison City Municipal Light and Power	641-8160
Greeley Gas Company	719-275-3338
Qwest Communications	1-800-244-1111
Adelphia Cable	641-6023
Building Official	641-8151
Fire Marshal	641-8153
Gunnison Police Department	641-8000
Gunnison County Housing Authority	641-7900
NW Legal Services	641-3023
Emergency	911